

(2000) 07 GAU CK 0011

Gauhati High Court (Aizawl Bench)

Case No: M.A.C. App. No. 25 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Sangzuali and Another

RESPONDENT

Date of Decision: July 21, 2000**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140(2), 141(3), 149(2), 170, 173

Citation: (2000) 3 GLT 248**Hon'ble Judges:** P.C. Phukan, J**Bench:** Single Bench**Advocate:** G. Raju, for the Appellant; A.R. Malhotra, for the Respondent**Final Decision:** Dismissed

Judgement

P.C. Phukan, J.

This is an appeal u/s 173 of the Motor Vehicle Act, 1988 directing against the impugned judgment and order passed on 28.7.99 by learned Presiding Officer, MACT, Aizawl in MACT Case No. 86/97 wherein the Appellant was directed to pay a sum of Rs. 6,57,600/- to the claimant as compensation.

2. I have heard Mr. G. Raju, learned Counsel for the Appellant as well as Mr. A.R. Malhotra, learned Counsel for the Respondents.

3. The brief facts of the case are that the Respondent No. 2 is the owner of the Maruti Taxi MZ-01/6891 which met with an accident in between Selesih and Sihphir on 31.5.97 around 6 PM causing the death of the husband of the Respondent No. 1 who was one of the passengers. The claimant Respondent No. 1 filed a claim petition before the learned Motor Accident Claims Tribunal, Aizawl claiming Rs. 17,82,000/- (Rupees Seventeen lakhs Eighty Two thousand) as compensation for the death of her husband. The said claim petition was registered as MACT Case No. 86/97. The present Appellant Insurance Company as Opposite party No. 2 contested the claim by filing a written statement After considering the evidence on record and

hearing the learned Counsel for the parties learned Presiding Officer, Motor Accident Claims Tribunal, Aizawl awarded an amount of Rs. 6,57,600/- as final compensation to the claimant Respondent No. 1 and the Appellant was directed to pay the amount within a period of one month, failing which to pay interest at the rate of 12% per annum from the date of filing of the claim petition till realisation-hence this appeal u/s 173 of the Motor Vehicles Act, 1988 before this Court.

4. At the outset Mr. Malhotra, learned Counsel for the Respondents has raised a technical objection that this appeal u/s 173 of the Motor Vehicles Act is not maintainable since the Appellant did not invoke the provisions of Section 170 of the Motor Vehicles Act in the Motor Accident Claims Tribunal and that he cannot file this appeal except on the grounds enumerated in Sub-section (2) of Section 149 of the Motor Vehicles Act. On perusal of the memorandum of appeal, I have found this appeal has not been preferred on the grounds so enumerated. In support of his contention Mr. Malhotra has relied upon a decision of the Supreme Court in [Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another](#), wherein it has been held:

It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined Respondent 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

5. Mr. Malhotra, learned Counsel for the Respondents, has referred to a decision of this Court reported in 1999 (2) GLT 235 (Oriental Insurance Co. Ltd. v. Member MACT) which has referred to the above mentioned decision of the Supreme Court. Another decision of this Court referred to by Mr. Malhotra is one reported in 1999 (1) GLT 440 (Kamakhyia Das and Anr. v. Upen Baruah and Ors. wherein it has been held:

It is now to be considered whether the appeal preferred by the Oriental Insurance Company is maintainable in view of this specific provision incorporated in Section 149(2) of the Act. A reading of Sub-section (2) of Section 149 would show that the

Insurance Company is entitled to prefer an appeal against an award on certain specific circumstances and not otherwise. The grounds of appeal as have been incorporated in the memo of appeal do not attract any of the permitted grounds. The law is well settled that the Insurance Company is entitled to challenge an award only on any of those conditions incorporated in the aforesaid section and not otherwise. This appeal by the Insurance Company is, therefore, not maintainable.

In the instant case also the grounds of appeal as have been incorporated in the memo of appeal do not attract any of the permitted grounds as mentioned.

Therefore, this appeal u/s 173 of the Motor Vehicles Act is not maintainable. Accordingly this appeal stands dismissed. Considering the facts and circumstances of the case, I leave the parties to bear their respective costs.

6. Before parting, it has been submitted by Mr. Raju, learned Counsel for the Appellant, that there has been a mistake in calculation of the amount Rs. 6,48,100/- against item No. 4 which should have been Rs. 5,48,100/- Mr. Raju further submits that the Appellant has already paid to the Respondents an amount of Rs. 50,000/- as compensation on the principle of no fault u/s 140(2) of the Motor Vehicle Act, 1988. Learned Counsel Mr. Raju submits that after correction in calculation as aforesaid the total compensation amount would stand at Rs. 5,57,600/- and deducting therefrom the already paid amount of Rs. 50,000/- u/s 141(3Xa) the Appellant shall be liable to pay Rs. 5,07,600/- (Rupees Five Lakhs Seven Thousand Six Hundred) only. Mr. Malhotra, learned Counsel for the Respondents, has fairly conceded to the submission of Mr. Raju, learned Counsel for the Appellant. In view of such submission made at the bar, the total amount the Appellant is liable to pay shall stand modified to Rs. 5,07,600/-. The Motor Accident Claims Tribunal's order as to the rate of interest is left undisturbed and such interest shall be on the modified amount only.

7. The appeal stands dismissed subject to what has been stated above. No costs.